Supreme Court, U.S.
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No. 91-1334

In The

Supreme Court of the United States

October Term, 1991

LAKE COUNTRY, INC.,

Petitioner,

v.

LEROY OLSEN and CHERYL OLSEN,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

This is a case arising under the Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1701ff (the "Act"), pursuant to which the sale of unimproved lots in interstate commerce is regulated. As stated by the petitioner, the case involves an interpretation of the Act as to whether an entity engaged in the business of buying large numbers of unimproved lots in existing subdivisions and reselling them to the general public using means and instrumentalities of interstate commerce is considered to be a "developer" within the meaning of the Act. A further question is whether the petitioner in the present case, Lake Country, Inc., a Virginia corporation ("Lake") was entitled to an exemption from the provisions of the Act. The Court of Appeals for the Fourth Circuit answered the first question in the affirmative and the second question in the negative.

ARGUMENT

It is not perceived by respondents to be their obligation at this time to respond to arguments which are merely germane to the case, and do not relate to the jurisdictional or discretionary issues which face this Court. Suffice it to say, were *certiorari* to be granted, that respondents would present additional facts and cite other cases relating to the above issues, as well as refuting those cited by petitioner. However, none of these relate to the question of whether this Court should grant a writ of *certiorari* at this time.

None of the cases cited by petitioner, and particularly the cases arising from the various United States Courts of Appeal, are in direct conflict with the decision here. Accordingly, there is no conflict between the circuits, and no basis for a grant of *certiorari* pursuant to Supreme Court Rules, Rule 10.1(a). If there is no conflict among the circuits, then the question for this Court is whether this case presents "an important question of federal law which has not been and should be settled by this Court. . . . " Supreme Court Rules, Rule 10.1(c).

In this connection, the issues raised by petitioner are currently being litigated in other cases involving the petitioner or its affiliates in three District Courts. In the United States District Court for the Western District of Virginia, in a proceeding brought by the United States Department of Justice on behalf of the United States Department of Housing and Urban Development ("HUD") to enforce the applicability of the Act against a corporate affiliate of petitioner, *Jack Kemp v. Cost Control Marketing and Sales Management of Virginia, Inc., et al.*, Civil No. 89-0042-C (W. D. VA), affirmed in part *sub nom Kemp v. Peterson* 940 F.2d 110 (4th Cir., 1991), the court has enjoined further sales by that affiliate without compliance with the Act. Private actions include one case involving the same affiliate of petitioner, presently pending in the United States District Court for the Western District of Virginia under the style *June P. Bailey, et al. v. Cost Control Marketing and Sales Management of Virginia, et al.*, Civil No. 89-0041-C (W. D. VA), in which a class of purchasers has been certified; two cases involving the same issues pending against the petitioner and others before the U.S.

District Court for the Eastern District of Virginia;[1] and four cases involving sales by a second affiliate of petitioner pending before the U.S. District Court for the Middle District of Pennsylvania.[2] All of these cases (other than those in Pennsylvania) have been delayed to a greater or lesser degree by the bankruptcy of two affiliates of petitioner, Cost Control Marketing and Management, Inc., a Pennsylvania corporation, and Cost Control Marketing and Sales Management of Virginia, Inc., a Virginia corporation.

The issues presented in this case will have substantial direct effects on a large number of litigants in the proceedings listed above. There are presently over 800 plaintiffs in the various cases before the various courts; should class certification be granted in the Eastern District of Virginia and the Middle District of Pennsylvania, the number of plaintiffs is expected to increase to between 3,000 and 5,000 families. The three corporations involved had sales in excess of $120,000,000 during their five years of activity. In addition to the cases pending against these three companies, it is believed that HUD has a substantial general interest in these issues and their impact on its

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[1] *Anthony Dryak, et al. v. Lake Country, Inc., et al.*, Civil No. 3: 90-CV-00526 (E. D. VA) and *Danny P. Goldstein, et al. v. Lake Country, Inc., et al.*, Civil No. 3: 91-CV-759 (E. D. VA).

[2] *Lorenzo Acevedo, et al. v. Northeastern Bank of Pennsylvania, et al.*, Civil No. 3: CV-91-1523 (M. D. PA); *Mario Aldini, et al. v. Northeastern Bank of Pennsylvania, et al.*, Civil No. 3: CV-91-1663 (M. D. PA); *Lolita S. Baduria, et al. v. Northeastern Bank of Pennsylvania, et al.*, Civil No. 3: CV-92-0136 (M. D. PA); and *Kenneth Bropson, et al. v. Northeastern Bank of Pennsylvania, et al.*, Civil No. 3: CV-91-0125 (M. D. PA).

regulatory duties. However, in view of the amount of litigation presently in train, in which the issues are likely to be sharpened and clarified, it is questionable whether granting a writ at this time would be appropriate.

CONCLUSION

For the foregoing reasons, the petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit should be denied.

Respectfully submitted,

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